

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

DEERE & COMPANY

PLAINTIFF

V.

CAUSE NO. 4:16CV206-DMB-JMV

DELBERT W. FARMER, JR.

DEFENDANT

ORDER

Before the court is Plaintiff's Application [4] for entry of default by the Clerk pursuant to FED.R.CIV.P. 55. Plaintiff's application, filed November 18, 2016, seeks entry of default by the Clerk against Defendant Delbert W. Farmer, Jr., "for his failure to plead or otherwise defend." According to the supporting affidavit, Farmer was served with a summons and a copy of the complaint on October 27, 2016, making his answer to the complaint due by November 17, 2016.

While no response to the instant motion has been filed by Farmer, he did indeed file his answer [5] to the complaint on November 18, one day after the due date and less than one hour after the filing of the instant application. Having duly considered the motion, the record, and the applicable law, the motion should be, and the same is hereby DENIED because the record does not show Farmer "has failed to plead or otherwise defend" as required by Rule 55(a). *Cf. Robbins v. Walker*, Civil Action No. 2:07cv371-KS-MTP, 2008, WL 341658, at *1 (S.D. Miss. Feb. 5, 2008) (only *after* entry of default by the clerk is a party precluded from entering an appearance or defense without leave of court). Moreover, Defendant filed his answer only one day late, so, the drastic measure of entry of default is not warranted. *Cf. Kite Maritime, Inc. v.*

Massan Shipping Indus., Inc., No. CIV.A. 97-3253, 1997 WL 795678, at *2 (E.D. La. December 23, 1997).

SO ORDERED this 14th day of December, 2016.

/s/ Jane M. Virden
U. S. MAGISTRATE JUDGE